

EXHIBIT "D"

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION (CINCINNATI)

1

MAFCOTE, INC.,

x

Plaintiff,

-against-

GENATT ASSOCIATES, INC.,

Defendant.

x

140 Broadway  
New York, New York

September 20, 2006  
1:04 p.m.

DEPOSITION of JOSEPH BLUMBERG, an  
expert witness in the above-entitled action,  
held at the above time and place, pursuant to  
Notice, taken before Carol Vilardi, a shorthand  
reporter and Notary Public within and for the  
State of New York.

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|---|--|
| <p>22</p> <p>1 Blumberg 22</p> <p>2 "the broker should have advised the insured</p> <p>3 that the correct way to submit the claim would</p> <p>4 have been for Miami to have suffered and</p> <p>5 processed the entire loss." What I am asking</p> <p>6 you is: If Genatt had no advance notice that</p> <p>7 Royal Consumer Products was purchasing this</p> <p>8 paper, how could Genatt have breached a duty in</p> <p>9 this regard?</p> <p>10 A I'm not sure I can answer that.</p> <p>11 Q Why not?</p> <p>12 A Again, because I don't know what</p> <p>13 information had transpired between Genatt and</p> <p>14 Mafcote prior to.</p> <p>15 Q Fair enough. I'll ask you to</p> <p>16 assume that Genatt was never informed in</p> <p>17 advance that the Royal Consumer Products</p> <p>18 affiliate would purchase third-party product.</p> <p>19 If you make that assumption, then is it your</p> <p>20 opinion that Genatt should have advised Mafcote</p> <p>21 to have the Miami affiliate purchase that</p> <p>22 product?</p> <p>23 A I would think that Genatt did not</p> <p>24 have any idea as to what they were doing.</p> <p>25 Q When you say "they," you are</p> | <p>24</p> <p>1 Blumberg 24</p> <p>2 did cover the claim, but the claim was</p> <p>3 improperly submitted?</p> <p>4 A I have somewhat mixed feelings</p> <p>5 there.</p> <p>6 Q What are they -- the feelings?</p> <p>7 A My feelings are that if the insured</p> <p>8 had been aware of what ultimately the court</p> <p>9 held to be the situation, that they would have</p> <p>10 processed the claim through Miami. I also</p> <p>11 believe that if Genatt were aware of that</p> <p>12 exposure, that they should have provided</p> <p>13 coverage for it. I don't know if that answers</p> <p>14 your question or not.</p> <p>15 Q Do you know precisely when the</p> <p>16 third party purchases were made by Royal</p> <p>17 Consumer Products?</p> <p>18 A No.</p> <p>19 Q I show you what's been marked as</p> <p>20 Exhibit 5. Is this a document that you have</p> <p>21 seen before? This is an October 29, 2001</p> <p>22 letter from Steven Shulman to Nick Bozovich</p> <p>23 that contains a variety of schedules.</p> <p>24 A I believe that I have seen that.</p> <p>25 Q Have you also ever seen the Floex</p>           |
| <p>23</p> <p>1 Blumberg 23</p> <p>2 referring to Mafcote?</p> <p>3 A Mafcote. That they would not have</p> <p>4 been in a position to respond.</p> <p>5 Q Are you aware of the timing of the</p> <p>6 CNA claim handlers and when they got involved</p> <p>7 in the adjustment of this claim?</p> <p>8 A Yes.</p> <p>9 Q What is your understanding of that</p> <p>10 timing?</p> <p>11 A My understanding of the timing was</p> <p>12 that the accident occurred on or about July 16,</p> <p>13 2001. The claim was reported to CNA on or</p> <p>14 about August 14th -- 13th or 14th of 2001.</p> <p>15 Q Is it your understanding that CNA</p> <p>16 immediately assigned a claim adjuster?</p> <p>17 A Yes.</p> <p>18 Q Going back to your opinion about</p> <p>19 Miami submitting the extra expense claim. Is</p> <p>20 it actually your opinion that this policy,</p> <p>21 purely from a coverage standpoint, could have</p> <p>22 provided insurance coverage for this loss? You</p> <p>23 state, "CNA would have had to pay the claim."</p> <p>24 A Yes.</p> <p>25 Q So, it's your opinion the policy</p>   | <p>25</p> <p>1 Blumberg 25</p> <p>2 invoices?</p> <p>3 A I did not check the invoices or the</p> <p>4 dates of the invoices that are attached.</p> <p>5 Q Are you aware that the Floex</p> <p>6 invoices that are at issue in this suit relate</p> <p>7 to purchases made in July of 2001?</p> <p>8 A No.</p> <p>9 Q Is it your understanding that CNA's</p> <p>10 liability for insurance coverage began upon the</p> <p>11 report of the loss to CNA?</p> <p>12 A I know that's the -- that they have</p> <p>13 taken that their liability began twenty-four</p> <p>14 hours prior to the time of the report.</p> <p>15 Q Do you disagree with that position?</p> <p>16 A Do I disagree with that? According</p> <p>17 to their policy, that's what it says.</p> <p>18 Q So, that period of liability, the</p> <p>19 onset of it, is an accurate statement of the</p> <p>20 coverage?</p> <p>21 A It's an accurate statement of</p> <p>22 coverage. The unfortunate thing is it got</p> <p>23 reported to the prior carrier.</p> <p>24 Q So, if Floex purchases were made in</p> <p>25 July of 2001 prior to being reported to CNA, is</p> |